



POSTAL REGULATORY COMMISSION

39 CFR Parts 3000, 3010, 3040, 3041

[Docket No. RM2023-5; Order No. 6953]

RIN 3211-AA34

Competitive Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Notice of Proposed Rulemaking seeks comment on a proposal for reviewing contracts negotiated between the Postal Service and customers for competitive services. These contracts are known as competitive negotiated service agreements (NSAs). The proposal includes a default method for reviewing competitive NSAs and three optional streamlined methods. Different requirements apply to each method for reviewing proposed competitive NSAs. In addition, the proposal includes requirements for administering approved competitive NSAs. The proposal is designed to streamline competitive NSA review, ensure transparency and accountability, preserve existing flexibility, and enable a smooth transition with minimum disruption for stakeholders. This document informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]; *Reply comments are due:* [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: Submit comments electronically via the Commission’s Filing Online system at <https://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives. The Rule Summary can be found on the Commission’s Rule Summary Page at <https://www.prc.gov/rule-summary-page>.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Basis of Proposed Rules
- III. Proposed Rules

I. Background

A Negotiated Service Agreement (NSA) is “a written contract, to be in effect for a defined period of time, between the Postal Service and a mailer, which provides for customer-specific rates or fees and/or terms of service in accordance with the terms and conditions of the contract.” 39 CFR 3010.101(f). These NSAs require prior Commission approval before they are added to the applicable product lists; however, different statutory and regulatory criteria apply to the approval of Market Dominant NSAs and Competitive NSAs.¹

Before adding a product (such as a Competitive NSA) to the Competitive product list, the Commission undertakes two types of review: (1) review under 39 U.S.C. 3642; and (2) review under 39 U.S.C. 3633. Upon consideration of

¹ See, e.g., 39 U.S.C. 3642; Postal Regulatory Commission, *Annual Report to the President and Congress Fiscal Year 2021*, January 25, 2022, at 26 (*FY 2021 Annual Report*) (stating that the Commission reviews Market Dominant NSAs to ensure they comply with 39 U.S.C. 3622(c)(10) and the Commission’s regulations in 39 CFR part 3040, subpart G); *id.* at 28 (stating that Competitive NSAs require prior Commission review for compliance with 39 U.S.C. 3633(a) and 39 CFR part 3035). The focus of this docket is Competitive NSAs.

required information submitted by the Postal Service, including projections of the proposed product's revenues and costs and responses to any information requests,² the Commission determines whether the product complies with the requirements for Competitive products in 39 U.S.C. 3642. The Commission also makes a preliminary determination of whether the proposed product will comply with the criteria outlined in 39 U.S.C. 3633(a). Final determination of compliance with 39 U.S.C. 3633(a) is made retrospectively, in the Commission's *Annual Compliance Determination(s)* (ACD), as set forth in 39 U.S.C. 3653.

Over the years, various efforts have sought to streamline review of NSAs in certain respects by applying the concept of functional equivalence to groups of NSAs.³ An "umbrella" product is a grouping of NSAs that are functionally equivalent to a baseline agreement. The Commission has used a functional equivalence analysis to approve "umbrella" product agreements.⁴ Non-published rates NSA products are a refinement of "umbrella" products that receive further streamlined review because the products "conform to a template agreement and offer prices within specified, pre-approved ranges." Order No. 5753 at 3. These products must comply with Commission classification and regulatory

² See 39 CFR 3035.105. This information includes "[s]ufficient revenue and cost data for the 12-month period following the effective date of the rate or class to demonstrate that each affected competitive product will be in compliance with 39 U.S.C. 3633(a)(2)[.]" 39 CFR 3035.105(c)(1).

³ See, e.g., Docket No. CP2008-5, Order Concerning Global Expedited Package Services Contracts, June 27, 2008 (Order No. 86).

⁴ See, e.g., Order No. 5753 at 2-3 (summarizing the Commission's approach to "umbrella" products); Docket No. R2013-9, Order Granting, in Part, Motion for Partial Reconsideration of Order No. 1864 and Modifying, in Part, Order No. 1864, August 11, 2014, at 7 (Order No. 2148) (allowing then-existing "umbrella" products to designate multiple baseline agreements but "plan[ning] to discontinue the practice of designating more than one baseline reference."). The Commission also has considered similar arrangements termed "shell classifications," which may use a "shell" or template in lieu of an actual agreement as a baseline. See Docket No. CP2008-8 *et al.*, Order Concerning Global Plus Negotiated Service Agreements, June 27, 2008, at 7-8 (Order No. 85); *cf.* Docket No. MC2008-6 *et al.*, Order Concerning Prices Under Inbound Direct Entry Contracts with Certain Foreign Postal Administrations, September 4, 2008, at 3, 7 (Order No. 105).

requirements, including pre-approved pricing formulas, minimum cost coverage, and documentation, allow for a streamlined review process because the contract template and financial model are approved in advance.⁵

In Order No. 6446, the Commission outlined concepts for potential enhancements to its regime for adding NSAs to the Competitive product list in the Framework. See Order No. 6446 at 12. The core feature of the Framework was establishing a three-track system for categorizing and reviewing NSAs proposed to be added to the Competitive product list. *Id.* Under this Framework, a proposed NSA would have been filed in one of three tracks, and each track would have had distinct filing and review procedures providing different levels of scrutiny and review. *Id.* These tracks would have consisted of a Custom NSA track, a Standard NSA track, and an NPR NSA track. *Id.*

The Commission received comments in response to Order No. 6446. Previously, the Commission developed a conceptual framework that contemplated separate tracks for filing and reviewing certain types of NSAs, and requested comments thereon. Having considered the comments received, the Commission revises its proposed regulations.

II. Basis of the Proposed Rules

Despite improvements over time, the Commission maintains that streamlining and codifying the rules pertaining to Competitive NSAs will provide increased clarity concerning filing requirements and review processes. Codifying such procedures and standards also provides an opportunity to make improvements to the practices and precedents that have developed, while

⁵ See Order No. 5753 at 3; Docket Nos. MC2010-29 and CP2010-72, Order Approving Postal Service Request to Add Global Expedited Package Services–Non-Published Rates 1 to the Competitive Product List, November 22, 2010, at 15 (Order No. 593) (“[T]he model contract is based on business rules which ensure that each contract covers its attributable costs and makes a contribution to institutional costs.”).

maintaining the opportunities for pricing flexibility that NSAs afford the Postal Service.

Specifically, the Commission proposes to codify, with modifications, its existing NSA filing and review procedures as default rules for proposals to add NSAs to the Competitive product list. The Commission proposes to codify, with modifications, existing, optional, streamlined methods for adding qualifying Umbrella products and Non-Published Rate products to the Competitive product list. The Commission also proposes to create a new streamlined filing option for qualifying NSAs called Standardized Distinct Products. Each streamlined option would have distinct filing and review procedures providing different levels of scrutiny and streamlined review. The intent is to preserve the Postal Service's existing contracting flexibility with default review procedures, while providing the option for streamlined pre-implementation review of NSAs that satisfy the eligibility requirements of one of the optional streamlined methods.

The Commission's proposal provides new filing and review procedures for Standardized Distinct Product NSAs. These procedures would include advance review of financial models to streamline review of individual NSAs that are based on existing Postal Service competitive products. Proposing new Non-Published Rate Products also would involve advance review of financial models. By contrast, filing and review procedures for Umbrella Products would generally follow current practices. Default filing and review procedures would consist of current, generally applicable filing and review practices for Competitive NSAs (other than Umbrella Product or Non-Published Rate Product NSAs).

The Commission also proposes rules for administering NSAs on the Competitive product list. These proposed rules cover amendments, renewals,

extensions, and terminations of Competitive NSAs, as well as periodic reporting requirements.

The Commission's proposal is designed to streamline Competitive NSA review, while ensuring transparency and accountability, preserving existing flexibility, and enabling a smooth transition with minimum disruption for stakeholders. Under the Commission's proposal, the vast majority of proposed Competitive NSAs should qualify for a streamlined review procedure. Use of such streamlined procedures, particularly the Standardized Distinct Product option, should markedly simplify adding new NSAs to the Competitive product list.

III. Proposed Rules

List of Subjects

39 CFR Part 3000

Organization and functions, Seals and insignia.

39 CFR Part 3010

Administrative practice and procedure, Confidential business information, Freedom of information, Sunshine Act.

39 CFR Part 3040

Administrative practice and procedure, Foreign relations, Postal service.

39 CFR Part 3041

Administrative practice and procedure, Postal service, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commission proposes to amend chapter III of title 39 of the Code of the Federal Regulations as follows:

PART 3000—THE COMMISSION AND ITS OFFICES

1. The authority citation for part 3000 continues to read as follows:

Authority: 39 U.S.C. 503; 5 U.S.C. 552.

2. Amend § 3000.114 by revising paragraph (a) to read as follows:

§ 3000.114 The Public Representative.

(a) Pursuant to 39 U.S.C. 505, the Commission appoints a staff member, on a case-by-case basis, to serve as a representative of the general public's interests in public proceedings before the Commission; pursuant to 39 U.S.C. 3653, 39 U.S.C. 3661, and 39 U.S.C. 3662, and 39 U.S.C. 3705, the Commission also appoints a staff member, on a case-by-case basis, to serve as a representative of the general public's interests in certain proceedings; and, pursuant to 39 U.S.C. 504(a), the Chairman may appoint a staff member, on a case-by-case basis, to serve as a representative of the general public's interests in other proceedings before the Commission. In all such proceedings, the appointee is called the Public Representative.

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PART 3010—RULES OF PRACTICE AND PROCEDURE

3. The authority citation for part 3010 continues to read as follows:

Authority: 39 U.S.C. 404(d); 503; 504; 3661.

§ 3010.101 Definitions.

4. Amend § 3010.101 by:

- a. Redesignating paragraphs (p) through (u) as paragraphs (q) through (v);
- b. Adding new paragraph (p); and
- c. Revising newly redesignated paragraph (q).

The revision and addition read as follows:

§ 3010.101 Definitions

* * * * *

(p) **Public proceeding** means a proceeding developing rules, regulations, and procedures or a proceeding materially affecting the interests of the general public. A proceeding considering a request for summary approval of a negotiated service agreement or of an amendment to a negotiated service agreement is not a public proceeding. A proceeding considering a request to amend a negotiated service agreement for the sole purpose of extending the expiration date of the negotiated service agreement is not a public proceeding.

(q) **Public Representative or PR** means an officer of the Commission designated to represent the interests of the general public:

(1) In a public proceeding;

(2) With respect to any one of the following:

(i) The Commission's annual determination of compliance;

(ii) A request for an advisory opinion on a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis,

(iii) A rate or service complaint; or

(iv) Appeal of a Postal Service determination to close or consolidate a post office; or

(3) As appointed by the Chairman.

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§ 3010.102 Commission dockets.

5. Amend § 3010.102 by:

- a. Redesignating paragraphs (d)(1)(vii) through (xiv) as paragraphs (d)(1)(viii) through (xv); and
- b. Adding new paragraph (d)(1)(vii).

The addition read as follows:

§ 3010.102 Commission dockets

* * * * *

(d)(1) * * *

(vii) Competitive Negotiated Service Agreement (K);

* * * * *

- 6. Revise § 3010.140 to read as follows:

§ 3010.140 Opportunity to comment.

Except for proceedings involving an appeal of a Postal Service determination to close or consolidate a post office, any person may submit comments in public proceedings before the Commission. An opportunity to provide a reply to comments shall be at the discretion of the Commission, or the presiding officer if one is appointed. The scope and timing of comments and reply comments may be specified by notice, order, or presiding officer's ruling. There is no requirement to intervene in a proceeding as a party in order to submit comments.

- 7. Amend § 3010.152 by revising paragraphs (a), (b)(5) and (b)(6) to read as follows:

§ 3010.152 Notices initiating dockets for consideration of negotiated service agreements.

(a) The Secretary shall issue a notice to initiate a docket for each request that proposes the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing

product currently appearing on the market dominant or the competitive product list. Multiple requests may be combined into a single notice.

(b) * * *

(5) The appointment of an officer of the Commission to represent the interests of the general public in the proceeding, unless the proceeding is not a public proceeding.

(6) The comment deadline pertaining to each request, unless the proceeding is not a public proceeding.

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8. Amend § 3010.200 by revising paragraph (b) to read as follows:

§ 3010.200 Applicability.

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(b) Unless the Commission orders otherwise, the rules in this subpart shall not apply to proceedings governed by subpart F of this part (Proceedings with an Opportunity for a Hearing on the Record). The rules in this subpart also shall not apply to the following parts of subchapter D of chapter III (Special Rules of Practice for Specific Proceeding Types) of this title: part 3020 (Rules Applicable to Requests for Changes in the Nature of Postal Services) of this chapter, part 3021 (Rules for Appeals of Postal Service Determinations to Close or Consolidate Post Offices) of this chapter, part 3022 (Rules for Complaints) of this chapter, part 3023 (Rules for Rate or Service Inquiries) of this chapter, and part 3024 (Special Rules for Complaints Alleging Violations of 39 U.S.C. 404a) of this chapter. The rules in this subpart shall not apply to any proceeding governed by § 3041.325, § 3041.505(f), and § 3041.505(g) (Competitive Negotiated Service Agreements) of this chapter.

PART 3040—PRODUCT LISTS AND THE MAIL CLASSIFICATION

SCHEDULE

9. The authority citation for part 3040 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

10. Amend § 3040.101 by adding paragraph (e) to read as follows:

§ 3040.101 Applicability.

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(e) Modification of the competitive product list to add a competitive negotiated service agreement is not governed by this part but is governed by part 3041 of this chapter. The rules in part 3041 of this chapter regarding removal of a negotiated service agreement from the competitive product list supersede any conflicting rules in this part.

PART 3041—COMPETITIVE NEGOTIATED SERVICE AGREEMENTS

11. Add part 3041 to read as follows:

PART 3041—COMPETITIVE NEGOTIATED SERVICE AGREEMENTS

Subpart A—General

Sec.

3041.105 General.

3041.110 Definitions.

Subpart B—Advance Review

Sec.

3041.205 Advance review of non-published rates products and standardized distinct products.

Subpart C—Adding Negotiated Service Agreements to the Competitive Product List

Sec.

3041.305 Applicability.

3041.310 General procedures and filing requirements.

3041.315 Procedures and filing requirements for umbrella products.

3041.320 Procedures and filing requirements for non-published rates negotiated service agreements.

3041.325 Procedures and filing requirements for standard distinct product negotiated service agreements.

Subpart D—Commission Review

Sec.

3041.405 Docket and notice.

3041.410 Required findings.

3041.415 Commission review and disposition of requests to add negotiated service agreements to the competitive product list.

Subpart E—Negotiated Service Agreements on the Competitive Product List

Sec.

3041.505 Amendments to competitive negotiated service agreements.

3041.510 Renewals of competitive negotiated service agreements.

3041.515 Extensions

3041.520 Terminations

Subpart F—Negotiated Service Agreement Reporting and Compliance

Sec.

3041.605 Competitive negotiated service agreement reporting requirements.

Authority: 39 U.S.C. 503; 39 U.S.C. 3633

Subpart A—General

§ 3041.105 General.

(a) The rules in this part apply to competitive negotiated service agreements.

(b) When a general rule conflicts with a rule governing a specific streamlined option, the rule governing the specific streamlined option shall take precedence.

(c) Commission findings that the addition of a competitive negotiated service agreement to the competitive product list is not inconsistent with the standards of 39 U.S.C. 3633 are provisional and subject to subsequent review.

(d) The addition of a competitive negotiated service agreement to the competitive product list is limited to the term of the negotiated service agreement, as it may be extended. The Commission will remove a negotiated service agreement from the competitive product list automatically upon the expiration or termination of the negotiated service agreement. Any request to remove a

negotiated service agreement from the competitive product list unrelated to expiration or termination of the negotiated service agreement shall follow the applicable procedures outlined in part 3040 of this chapter.

(e) When a rule in subpart E of this part conflicts with a provision of a negotiated service agreement added to the competitive product list before the effective date of this part, the provision of the negotiated service agreement shall take precedence.

§ 3041.110 Definitions.

(a) *Applicability.* The definitions in paragraphs (b) through (q) of this section apply to this part.

(b) *Baseline agreement.* A negotiated service agreement that serves as a model for an included contract in an umbrella product.

(c) *Contract template.* A template for included contracts in a non-published rates product.

(d) *Financial model.* A workbook showing detailed projected cost, revenue, and volume data for a negotiated service agreement; containing all supporting inputs and calculations; and identifying the sources of all such inputs. A financial model must use accepted analytical principles within the meaning of part 3050 of this chapter and accepted quantification techniques within the meaning of part 3050 of this chapter.

(e) *Functionally equivalent negotiated service agreements.* Negotiated service agreements that have similar cost characteristics and similar market characteristics.

(f) *Included contract.* A negotiated service agreement included as part of an umbrella product or non-published rates product.

(g) *Minimum rates.* The set of lowest rates that could be offered pursuant to the terms of a negotiated service agreement, or specified in a financial model, for each rate cell.

(h) *Negotiated service agreement.* As defined in § 3010.101(f) of this chapter, a written contract, to be in effect for a defined period of time, between the Postal Service and a mailer, which provides for customer-specific rates or fees and/or terms of service in accordance with the terms and conditions of the contract. A rate associated with a negotiated service agreement is not a rate of general applicability.

(i) *Non-published rates product.* A single product consisting of a contract template and any included contracts that are functionally equivalent to the contract template and use a single common financial model.

(j) *Notice information.* Contact information specified in a negotiated service agreement for one party to provide the other party with notice in accordance with the terms of the negotiated service agreement.

(k) *Negotiated Service Agreement (NSA) summary proceeding.* A streamlined proceeding considering a Postal Service request to add to the competitive product list a product for which use of a financial model has been authorized in a streamlined-option rulemaking or a Postal Service request to amend such a product. Such a proceeding is not a public proceeding.

(l) *Postal Service executive.* The Postmaster General, the Deputy Postmaster General, or a Postal Service vice president.

(m) *Rate cell.* Each and every separate rate identified in a financial model or negotiated service agreement.

(n) *Standardized distinct product.* A negotiated service agreement that is a variation of one or more competitive products offered as rates of general

applicability or added to the competitive product list as rates not of general applicability.

(o) *Streamlined option*. An optional procedural approach to filing requirements for a request to add a negotiated service agreement to the competitive product list and to review of such negotiated service agreement.

(p) *Streamlined-option rulemaking*. A rulemaking proceeding that considers financial models, contract templates, and Mail Classification Schedule changes in connection with a streamlined option.

(q) *Umbrella product*. A single product consisting of a baseline agreement and one or more included contracts that are functionally equivalent to the baseline agreement.

Subpart B—Advance Review

§ 3041.205 Advance review of non-published rates products and standardized distinct products.

(a) The Commission reviews proposed financial models, minimum rates, and Mail Classification Schedule changes in streamlined-option rulemaking proceedings to permit streamlined review of non-published rates products and standardized distinct products.

(b) Streamlined-option rulemaking proceedings follow the procedures set forth in part 3010, subpart E of this chapter and the additional procedures set forth in this section.

(c) In addition to providing the information required by § 3010.201(b)(1) of this chapter, a petition for a streamlined-option rulemaking must:

(1) Provide a proposed financial model containing:

(i) Minimum rates for all rate cells;

- (ii) Projected volume for all rate cells;
 - (iii) Projected revenue at minimum rates;
 - (iv) Projected costs attributable;
 - (v) Projected coverage of costs attributable within the meaning of 39 U.S.C. 3633(a), expressed as a percentage; and
 - (vi) All input data, sources, and calculations used;
- (2) Provide a narrative explanation of how the proposed financial model complies with paragraph (d)(1) of this section;
- (3) Explain why the projected cost, revenue, and volume data in the proposed financial model are reasonable and reliable;
- (4) Identify the existing competitive product(s) on which proposed products will be based and the Commission order(s) in which such existing competitive product(s) were determined to be competitive;
- (5) Identify each way in which proposed products could differ from the existing competitive product(s) identified in paragraph (c)(4) of this section;
- (6) Explain why the potential differences identified in paragraph (c)(5) of this section do not cause any proposed products to satisfy the definition of a market dominant product within the meaning of 39 U.S.C. 3642(b)(1); and
- (7) Identify the Mail Classification Schedule section in which proposed products will be listed and provide any proposed changes therein in legislative format.
- (d) The financial model must:
- (1) Demonstrate that each negotiated service agreement that will use the minimum rates is not inconsistent with the standards of 39 U.S.C. 3633; and
- (2) Rely on reasonable and reliable projected cost, revenue, and volume data.

(e) The Mail Classification Schedule entry, including any proposed changes, must:

(1) Identify all material differences between proposed products and the existing competitive product(s) on which proposed products are based;

(2) Specify all options and features of proposed products included in the financial model; and

(3) For proposed products based on an existing product with rates not of general applicability, including a negotiated service agreement, describe all material aspects of the proposed products, including the information identified in § 3040.104(b)(3)(ii)(A) of this chapter.

(f) The Commission will issue an order authorizing the proposed financial model, minimum rates, and any Mail Classification Schedule changes for use in requests to add standardized distinct products and non-published rates products to the competitive product list if, after review, the Commission finds that:

(1) The financial model and minimum rates are not inconsistent with the standards of 39 U.S.C. 3633;

(2) The products using such proposed financial model, minimum rates, and Mail Classification Schedule changes will be competitive products; and

(3) The proposed Mail Classification Schedule changes comply with the requirements of this section and are not inconsistent with the proposed financial model.

(g) As a condition of any authorization issued pursuant to paragraph (f) of this section, the Postal Service shall be required to update the financial model whenever more accurate or complete cost, revenue, or volume data are available and no less frequently than every 12 months from the date on which such authorization is granted. Upon review of any updated financial model, the

Commission may require changes to any applicable minimum rates to ensure that the minimum rates are not inconsistent with the standards of 39 U.S.C. 3633.

Subpart C—Adding Negotiated Service Agreements to the Competitive Product List

§ 3041.305 Applicability.

(a) This subpart imposes requirements regarding the addition of negotiated service agreements to the competitive product list. These requirements are in addition to other requirements imposed by part 3035 of this chapter.

(b) The general requirements appearing in § 3041.310 apply to a request to add a negotiated service agreement to the competitive product list unless the request is filed under one of the streamlined, alternative options for competitive negotiated service agreement consideration appearing in § 3041.315, § 3041.320, and § 3041.325.

(c) Section 3041.320 is not applicable to any request to add an included contract to a non-published rates product listed on the competitive product list as of the effective date of this part. Any such request is governed by the terms of the Commission order approving the addition of such non-published rates contract to the competitive product list.

§ 3041.310 General procedures and filing requirements.

(a) Except as otherwise provided in §§ 3041.315, 3041.320, and 3041.325 of this part, in order to add a negotiated service agreement to the competitive product list, a request must be filed with the Commission as provided in this section and § 3035.105 of this chapter.

(b) Each request to add a negotiated service agreement to the competitive product list must include each of the following items:

(1) A copy of the negotiated service agreement;

(2) The rate and class decision of the Postal Service Board of Governors under 39 U.S.C. 3632 relating to the proposed negotiated service agreement and the record of the proceedings in connection with such decision;

(3) A copy of the applicable sections of the Mail Classification Schedule and the proposed changes therein in legislative format;

(4) The name, and class if applicable, of the proposed negotiated service agreement;

(5) A description clearly explaining the operative components of the negotiated service agreement;

(6) An explanation of the reason for initiating the docket and of why the proposed negotiated service agreement is not inconsistent with the applicable requirements of this part and any applicable Commission directives and orders;

(7) An explanation of the reasons why the addition of the product to the competitive product list will not result in a violation of the standards of 39 U.S.C. 3633;

(8) Verification that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products:

(i) Set the price of such product substantially above costs;

(ii) Raise prices significantly;

(iii) Decrease quality; or

(iv) Decrease output;

(9) Explanation of whether or not the proposed negotiated service agreement is covered by the postal monopoly as reserved to the Postal Service under 18 U.S.C. 1696 subject to the exceptions set forth in 39 U.S.C. 601;

(10) A description of the availability and nature of enterprises in the private sector engaged in the delivery of the proposed negotiated service agreement or substantially similar products;

(11) Any information available on the views of those who use, or will use, the proposed negotiated service agreement on the appropriateness of the proposed negotiated service agreement;

(12) A description of the likely impact of the proposed negotiated service agreement on small business concerns;

(13) The information required by § 3035.105(a) of this chapter;

(14) The information required by § 3035.105(b) of this chapter;

(15) The information required by § 3035.105(c) of this chapter;

(16) All other supporting justification upon which the Postal Service proposes to rely; and

(17) Such other information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed negotiated service agreement.

(c) In order to authorize the addition of a negotiated service agreement to the competitive product list, the Commission must:

(1) Give due regard to:

(i) The availability and nature of enterprises in the private sector engaged in the delivery of the proposed product;

(ii) The views of those who will use the proposed product on the appropriateness of adding the proposed product to the competitive product list; and

(iii) The likely impact of adding the proposed product to the competitive product list on small business concerns; and

(2) Make the following findings:

(i) The proposed negotiated service agreement is a competitive product; and

(ii) The proposed negotiated service agreement is not inconsistent with the standards of 39 U.S.C. 3633.

§ 3041.315 Procedures and filing requirements for umbrella products.

(a) The procedures described in this section and in § 3035.105(a) of this chapter apply to requests to add an included contract to an umbrella product or to create an umbrella product by adding an included contract to an existing baseline agreement. Requests to add a new negotiated service agreement to the competitive product list for use as a baseline agreement must instead follow the requirements of § 3041.310.

(b) Any of the following negotiated service agreements may function as a baseline agreement:

(1) An active negotiated service agreement, other than an included contract in a non-published rates product, listed on the competitive product list as of the effective date of this part.

(2) An active negotiated service agreement added to the competitive product list following a request pursuant to § 3041.310.

(3) An expired or terminated negotiated service agreement, other than an included contract in a non-published rates product or a standardized distinct

product, that the Commission authorized to serve as a baseline agreement before its expiration or termination.

(c) Only the Postal Service is permitted to propose to add an included contract to an umbrella product.

(d) A proposal to add an included contract to an umbrella product must include:

(1) A copy of the proposed included contract;

(2) The rate and class decision of the Postal Service Board of Governors under 39 U.S.C. 3632 relating to the proposed included contract and the record of the proceedings in connection with such decision;

(3) A statement identifying the applicable baseline agreement;

(4) A copy of the applicable sections of the Mail Classification Schedule and the proposed addition thereto in legislative format;

(5) A description clearly explaining the operative components of the included contract;

(6) An explanation of the reason for initiating the docket and of why the proposed negotiated service agreement is not inconsistent with the applicable requirements of this part and any applicable Commission directives and orders;

(7) An explanation of the reasons why the addition of the included contract to the umbrella product will not result in a violation of the standards of 39 U.S.C. 3633;

(8) A demonstration that the proposed included contract is functionally equivalent to the baseline agreement;

(9) The information required by § 3035.105(a) of this chapter;

(10) The information required by § 3035.105(b) of this chapter;

(11) The information required by § 3035.105(c) of this chapter;

(12) All other supporting justification upon which the Postal Service proposes to rely; and

(13) Such other information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed included contract.

(e) In order to authorize the addition of an included contract to an umbrella product, the Commission must make the following findings:

(1) The proposed included contract is functionally equivalent to the baseline agreement; and

(2) With the addition of the proposed included contract, the umbrella product is not inconsistent with the standards of 39 U.S.C. 3633.

§ 3041.320 Procedures and filing requirements for non-published rates negotiated service agreements.

(a) A request to add a non-published rates product to the competitive product list must comply with the requirements of this section and the requirements of § 3035.105(a) of this chapter.

(b) A non-published rates product contract template may be proposed at any time during or following the pendency of a streamlined-option rulemaking considering a proposed financial model, minimum rates, and Mail Classification Schedule changes for standardized distinct products and non-published rates products.

(c) A non-published rates product is added to the competitive product list after:

(1) Issuance of a Commission order authorizing the use of an applicable financial model, minimum rates, and Mail Classification Schedule changes in a streamlined-option rulemaking; and

(2) Issuance of a Commission order approving the non-published rates product contract template.

(d) A non-published rates product financial model, minimum rates, and Mail Classification Schedule changes must be, or have been, proposed in a streamlined-option rulemaking proceeding.

(e) A proposal for a non-published rates product contract template must include the following information:

(1) The proposed non-published rates product contract template;

(2) The rate and class decision of the Postal Service Board of Governors under 39 U.S.C. 3632 relating to the proposed non-published rates product contract template and the record of the proceedings in connection with such decision;

(3) A copy of the applicable sections of the Mail Classification Schedule and the proposed addition therein in legislative format;

(4) The number of the Commission order approving the use of the financial model associated with the proposed non-published rates product contract template or the number of the docket in which the financial model associated with the proposed non-published rates product contract template is being considered;

(5) A description clearly explaining the operative components of the non-published rates product contract template;

(6) A description of the availability and nature of enterprises in the private sector engaged in the delivery of the postal services involved in the proposed non-published rates product contract template;

(7) A description of the views of those who will use the postal services involved in the proposed non-published rates product contract template on the appropriateness of the proposed non-published rates product contract template;

(8) A description of the likely impact of the proposed non-published rates product contract template on small business concerns;

(9) In lieu of the certified statement required by § 3035.105(c)(2) of this chapter, a sworn statement of a Postal Service executive certifying that the proposed non-published rates product template is not inconsistent with the financial model approved, or under consideration by the Commission, in the order or docket identified in paragraph (e)(4) of this section;

(10) All other supporting justification upon which the Postal Service proposes to rely; and

(11) Such other information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed non-published rates product contract template.

(f) A non-published rates product contract template may include optional provisions to be selected by customers, provided that:

(1) The addition of any optional provision in any included contract will not be inconsistent with the standards of 39 U.S.C. 3633;

(2) The addition of any optional provision in any included contract represents a minor change to the included contract; and

(3) Each included contract that could be derived from the contract template is functionally equivalent to every other included contract that could be derived from the contract template.

(g) In order to authorize the addition of a non-published rates product to the competitive product list, the Commission must:

(1) Give due regard to:

(i) The availability and nature of enterprises in the private sector engaged in the delivery of the proposed product;

(ii) The views of those who will use the proposed product on the appropriateness of adding the proposed product to the competitive product list; and

(iii) The likely impact of adding the proposed product to the competitive product list on small business concerns; and

(2) Make the following findings:

(i) The proposed non-published rates product is a competitive product; and

(ii) The proposed non-published rates product contract template is not inconsistent with the standards of 39 U.S.C. 3633.

(h) After a non-published rates product has been approved, the Postal Service may add one or more included contracts to the product without filing a request or otherwise obtaining further approval from the Commission, provided that:

(1) The included contract does not deviate in any way from the non-published rates product contract template;

(2) No rate in any included contract is less than the corresponding minimum rate authorized in the associated streamlined-option rulemaking;

(3) The included contract bears a unique serial number; and

(4) Within 10 days after the effective date of each included contract, the Postal Service:

(i) Notifies the Commission of the effective date and scheduled expiration date of the included contract; and

(ii) Files a version of the applicable financial model updated to include all projected cost, revenue, and volume data specific to the included contract.

(i) Only the Postal Service is permitted to add an included contract to a non-published rates product.

(j) If any included contract is terminated before its scheduled expiration date, the Postal Service must inform the Commission within 7 days after such termination.

(k) If the Commission finds that the Postal Service has failed to comply with any requirements of paragraphs (h) or (j) of this section, the Commission may take any of the following actions:

(1) Require the Postal Service to request Commission approval in accordance with such terms as the Commission may specify by order, and obtain such approval, before adding any additional included contracts to non-published rates products; or

(2) Take other appropriate remedial action.

§ 3041.325 Procedures and filing requirements for standard distinct product negotiated service agreements.

(a) A request to add a standardized distinct product to the competitive product list must comply with the requirements of this section and the requirements of § 3035.105(a) of this chapter.

(b) A standardized distinct product may be proposed at any time during or following the pendency of a streamlined-option rulemaking proceeding considering a proposed financial model, minimum rates, and Mail Classification

Schedule changes for standardized distinct products and non-published rates products.

(c) A standardized distinct product is added to the competitive product list after:

(1) Issuance of a Commission order authorizing the use of an applicable proposed financial model, minimum rates, and Mail Classification Schedule changes in a streamlined-option rulemaking; and

(2) Issuance of a Commission order approving the addition of the standardized distinct product to the competitive product list in an NSA summary proceeding.

(d) In each NSA summary proceeding, the Postal Service shall submit:

(1) A copy of the negotiated service agreement;

(2) The rate and class decision of the Postal Service Board of Governors under 39 U.S.C. 3632 relating to the proposed negotiated service agreement and the record of the proceedings in connection with such decision;

(3) A copy of the applicable sections of the Mail Classification Schedule and the proposed addition therein in legislative format;

(4) The number of the Commission order resolving the streamlined-option rulemaking proceeding applicable to the proposed negotiated service agreement;

(5) The planned effective date(s) of the planned rates.

(6) A description clearly explaining the operative components of the negotiated service agreement;

(7) An explanation of the reason for initiating the docket and of why the proposed standardized distinct product is not inconsistent with the applicable requirements of this part and any applicable Commission directives and orders;

(8) An explanation of the reasons why the addition of the standardized distinct product to the competitive product list will not result in a violation of the standards of 39 U.S.C. 3633;

(9) A description of the availability and nature of enterprises in the private sector engaged in the delivery of the postal services that are the subject of the proposed standardized distinct product;

(10) Any information available on the views of those who use, or will use, the proposed standardized distinct product on the appropriateness of the proposed standardized distinct product;

(11) A description of the likely impact of the proposed standardized distinct product on small business concerns;

(12) In lieu of the certified statement required by § 3035(c)(2) of this chapter, a sworn statement of a Postal Service executive certifying that the proposed standardized distinct product is not inconsistent with the financial model authorized for use in the applicable Commission order identified in paragraph (e)(4) of this section;

(13) In lieu of the revenue and cost data required by § 3035.105(c)(1) of this chapter, a version of the applicable financial model updated to include all projected cost, revenue, and volume data specific to the proposed product;

(14) All other supporting justification upon which the Postal Service proposes to rely; and

(15) Such other information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed standardized distinct product.

(e) Only the Postal Service is permitted to propose to add a standardized distinct product to the competitive product list.

(f) In order to authorize the addition of a standardized distinct product to the competitive product list, the Commission must:

(1) Give due regard to:

(i) The availability and nature of enterprises in the private sector engaged in the delivery of the proposed product;

(ii) The views of those who will use the proposed product on the appropriateness of adding the proposed product to the competitive product list; and

(iii) The likely impact of adding the proposed product to the competitive product list on small business concerns; and

(2) Make the following findings:

(i) The proposed standardized distinct product is a competitive product; and

(ii) The proposed standardized distinct product is not inconsistent with the standards of 39 U.S.C. 3633.

Subpart D—Commission Review

§ 3041.405 Docket and notice.

(a) The Commission will issue a notice establishing a docket for each request to add a negotiated service agreement to the competitive product list under this part. The Commission will also issue notice upon receiving a request complying with the requirements of § 3041.505(b) to amend an existing negotiated service agreement. Notices issued pursuant to this paragraph will include:

- (1) The general nature of the proceeding;
- (2) A reference to the legal authority pursuant to which the proceeding is to be conducted;
- (3) A concise description of the proposal;
- (4) If applicable, the identification of an officer of the Commission to represent the interests of the general public in the docket;
- (5) If applicable, a specified period for public comment; and
- (6) Such other information as the Commission deems appropriate.

(b) The Commission will post the notice on its website. The Commission will promptly publish the notice in the **Federal Register**.

(c) In the case of a request to add a standardized distinct product to the competitive product list or to amend a standardized distinct product, an officer of the Commission to represent the interests of the general public will not be appointed in the docket.

(d) In the case of a request to add a standardized distinct product to the competitive product list or to amend a standardized distinct product, public comment will not be requested in the docket.

§ 3041.410 Required findings.

(a) In order to authorize the addition of a negotiated service agreement to the competitive product list, the Commission must make the findings specified in § 3041.310, except as provided in § 3041.315, § 3041.320, and § 3041.325.

(b) [Reserved].

§ 3041.415 Commission review and disposition of requests to add negotiated service agreements to the competitive product list.

(a) The Commission will review each request to add a negotiated service agreement to the competitive product list and any responsive comments, except

as set forth in § 3041.320 regarding non-published rates product included contracts. The Commission will either:

- (1) Grant the request upon making the required findings;
- (2) Grant the request upon making the required findings with such conditions as the Commission may consider appropriate;
- (3) Deny the request; or
- (4) Direct other action as the Commission may consider appropriate.

(b) Each grant of a request under paragraph (a)(1) or (a)(2) of this section is conditional upon the submission of accurate information in support of the request. Any such grant may be revoked if the Commission finds that any of the information submitted with the request contained a material misrepresentation.

Subpart E—Negotiated Service Agreements on the Competitive Product List

§ 3041.505 Amendments to competitive negotiated service agreements.

(a) Except as provided in paragraph (c) of this section, an amendment to an existing negotiated service agreement is not effective until the Commission has approved the amendment. In order to approve an amendment to an existing negotiated service agreement the Commission must find that the negotiated service agreement, as amended by the proposed amendment, is not inconsistent with the standards of 39 U.S.C. 3633.

(b) A request to amend a negotiated service agreement must include:

- (1) A copy of the amendment;
- (2) The planned effective date(s) of the amendment;
- (3) A statement explaining the operative components of the amendment;

and

(4) If the amendment changes any rates in the negotiated service agreement,

(i) The information required by 39 CFR 3035.105(a) of this chapter;

(ii) The information required by 39 CFR 3035.105(b) of this chapter; and

(iii) The information required by 39 CFR 3035.105(c) of this chapter,

except that, for a request to amend a standardized distinct product, a copy of the applicable financial model updated to include all projected cost, revenue, and volume data specific to the product, as amended by the proposed amendment, must be provided.

(5) All other supporting justification upon which the Postal Service proposes to rely; and

(6) Such other information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed amendment.

(c) An amendment to an existing negotiated service agreement may take effect upon filing with the Commission without Commission approval if each of the following requirements is satisfied:

(1) The Postal Service submits a notice to the Commission containing:

(i) A copy of the amendment;

(ii) The planned effective date(s) of the amendment;

(iii) A statement explaining the operative components of the amendment;

and

(iv) A sworn statement from a Postal Service executive attesting that the amendment modifies the existing negotiated service agreement only in one or more of the ways specified in paragraphs (c)(2), (e)(2), or (f)(2) of this section; and

(2) The amendment modifies the existing negotiated service agreement only in one or more of the following ways:

- (i) Changing the customer's name to recognize a change to the legal name of the customer;
- (ii) Changing the customer's address;
- (iii) Changing the name of any individual identified in the contract;
- (iv) Changing notice information;
- (v) Increasing any rates, prices, fees, or charges in the negotiated service agreement;

(d) Special rules regarding amending umbrella products.

(1) A baseline agreement shall not be amended, except to:

- (i) Change the customer's name to recognize a change to the legal name of the customer;
- (ii) Change the customer's address;
- (iii) Change the name of any individual identified in the contract;
- (iv) Change notice information;
- (v) Extend the term of the baseline agreement in accordance with § 3041.515; or

(vi) Make rate changes not inconsistent with the standards of 39 U.S.C. 3633.

(2) An included contract in an umbrella product shall not be amended, unless the amendment remains functionally equivalent to the baseline agreement.

(e) Special rules regarding non-published rates products.

(1) A non-published rates contract template shall not be amended.

(2) An included contract in a non-published rates product shall not be amended, except to:

(i) Change the customer's name to recognize a change to the legal name of the customer;

(ii) Change the customer's address;

(iii) Change the name of any individual identified in the contract;

(iv) Change notice information;

(v) Make rate changes provided that the rates to be charged equal or exceed the current minimum rates approved by the Commission in the applicable streamlined-option rulemaking;

(vi) Extend the included contract's expiration date provided that the rates to be charged equal or exceed the current minimum rates approved by the Commission in the applicable streamlined-option rulemaking;

(vii) Select an alternative optional provision available in the contract template.

(3) An amendment to an existing included contract will take effect without Commission further approval upon filing with the Commission of the notice specified in paragraph (c)(1) of this section.

(f) Special rules regarding standardized distinct products.

(1) A request to amend a standardized distinct product is reviewed in an NSA summary proceeding.

(2) An amendment to an existing standardized distinct product may take effect upon filing with the Commission without Commission approval if:

(i) The Postal Service files the notice specified in paragraph (c)(1) of this section; and

(ii) The amendment modifies the existing standardized distinct product in one or more of the following ways:

(A) Changing the customer's name to recognize a change to the legal name of the customer;

(B) Changing the customer's address;

(C) Changing the name of any individual identified in the contract;

(D) Changing notice information;

(E) Extending the standardized distinct product's expiration date provided that the rates to be charged equal or exceed the current minimum rates approved by the Commission in the applicable streamlined-option rulemaking; or

(F) Implementing changes to rates provided that such changed rates equal or exceed the current minimum rates approved by the Commission in the applicable streamlined-option rulemaking.

(g) Special rules regarding a request to amend a negotiated service agreement to extend the expiration date of the negotiated service agreement.

1. A request to amend a negotiated service agreement to extend the expiration date of the negotiated service agreement must be submitted in accordance with § 3041.515.

2. A proceeding considering a request to amend a negotiated service agreement to extend the expiration date of the negotiated service agreement is not a public proceeding.

(h) When a general rule conflicts with a special rule in this section, the special rule shall take precedence.

§ 3041.510 Renewals of competitive negotiated service agreements.

(a) A renewal of a negotiated service agreement is deemed a new negotiated service agreement.

(b) A renewal of a competitive negotiated service agreement will be added to the competitive product list pursuant to the applicable rules for adding a new negotiated service agreement to the competitive product list.

§ 3041.515 Extensions

(a) A negotiated service agreement may be extended prior to its expiration date upon one of the following:

1. Timely filing of notice with the Commission of the valid exercise of an extension right in the negotiated service agreement; or
2. Approval by the Commission of a timely filed amendment extending the expiration date of the negotiated service agreement.

(b) For the purposes of paragraph (a) of this section, a notice or amendment is timely filed if it is filed at least 10 days prior to the expiration of the negotiated service agreement.

(c) Upon expiration, a negotiated service agreement shall be removed automatically from the competitive product list.

(d) No negotiated service agreement shall remain on the competitive product list following its expiration. An expired negotiated service agreement shall not be extended retroactively.

(e) Notwithstanding any other rule in this chapter, the prohibitions in paragraph (d) of this section shall not be waived.

§ 3041.520 Terminations

(a) The Postal Service shall file notice of the termination of a negotiated service agreement within 7 days after such termination.

(b) Upon termination, a negotiated service agreement shall be removed automatically from the competitive product list. No negotiated service agreement shall remain on the competitive product list after its termination.

Subpart F—Negotiated Service Agreement Reporting and Compliance

§ 3041.605 Competitive negotiated service agreement reporting requirements.

(a) The Postal Service must file, on a quarterly basis, a summary spreadsheet listing all negotiated service agreements active during any part of the prior quarter. Negotiated service agreements must be listed by Mail Classification Schedule section or in such other way as the Commission requires by order. Such spreadsheet must identify all extensions, expirations, and terminations of negotiated service agreements and any other information the Commission requires by order.

(b) A report is due within 7 days after the last day of each quarter of the fiscal year.

(c) Upon finding that any report contains significant omissions, inaccuracies, or other deficiencies, the Commission may take any of the following actions:

1. Require the Postal Service to file such reports on a more frequent basis;
2. Require a Postal Service executive to submit a sworn statement attesting to the accuracy and completeness of each subsequent report; and
3. Impose other conditions the Commission finds reasonable and appropriate to ensure the accuracy and completeness of such reports.

By the Commission.

Jennie Jbara,

Alternate Certifying Officer.

